evidence is the corresponding noun. In our early law it had the same meaning as it did in Norman-French, and was used to denote writings or documents, as they spoke for themselves. In Smith's "Commonwealth of England," Book II., chap. 18, is an instance of this use.

The word gradually acquired a broader meaning, and in chap. 26 of the same book it is used to include "indices or tokens."

For a long time, however, it has had its present meaning, as may be seen in Finch's "Common Law" (1654), Book III., chap. 1, where it is defined as "anything whatsoever which serves the party to prove the issue for him."

Bentham's definition, as modified by Best, "Evidence is any matter of fact, the effect, tendency, or design of which is to produce in the mind a persuasion, affirmative or disaffirmative, of the existence of some other matter of fact," is perhaps a good one, but requires a definition of fact. This can be defined by nothing narrower than anything whatever looked at from a certain point of view; that is, as something on which to base an inference. For legal use it must be narrowed by excepting all reasoning in regard to the law of the jurisdiction in question. Evidence does not include this, nor does it include such facts as are taken for granted.

Whatever, therefore, must be shown to the Court is the subject-matter of evidence. As thus used it may include the persons of the witnesses, as well as what they testify, and also any object shown to the jury,—what Bentham and Best call real evidence.

STATUTE OF LIMITATIONS. JOINDER OF TIMES BY SUCCESSIVE DISSEISORS. — (*From Prof. Gray's Lectures.*)—The consecutive possessions of successive independent disseisors, although without privity of estate between them, can, perhaps, be tacked together to give the continuity of disseisin required by the Statute of Limitations. Thus, if A adversely occupies B's land for ten years, and is then disseised by C, C, after ten years' additional adverse occupancy of B's land, will have a good defence in an action of ejectment brought against him by B.

The case is not analogous to the acquiring of title to an incorporeal hereditament by prescription. The adverse user of an easement for the prescribed time gains an absolute title to the easement. To gain this title it is necessary that the adverse use should be continued for the entire time, either by the same person, or by successors who represent the same *persona* or estate. Therefore, if A, after adversely using a right of way for ten years over his neighbor's land is disseised by C, the disseisor, after ten years continued adverse user of the right of way, will have gained no title to the easement; a disseisor does not represent the *persona* of the previous estate, and cannot tack his time to that of his predecessor. (Holmes' Common Law, 368, and cases cited.)

The effect of the Statute of Limitations is different. The Statute 21 Jac. I. c. 16, from which our Statutes of Limitations as to ejectment are commonly copied, provided [S. I. (4)] that "no person or persons shall at any time hereafter make any entry into any lands, tenements, or hereditaments, but within twenty years, next after his or their right or title, which shall hereafter first descend or accrue to the same; and in default thereof such persons so not entering, and their heirs, shall be utterly excluded and disabled from such entry after to be made."

Under this statute, the adverse occupancy of the land does not create a right or title in the occupier, but acts as a bar to the remedy of the original owner, who, after twenty years' loss of possession, cannot set up his title against the occupier. This statute, like that of 32 Hen. VIII. c. 2, which it followed, did not run from the time when the defendant's possession was acquired, but from the time when the plaintiff's possession was lost. The statute looked not at the defendant's possession, but at the plaintiff's want of possession.

It would follow from this construction of the statute, although contrary to received opinion,[1] that in the case under discussion, to bar this remedy of the original owner, B, the second disseisor, C, can tack his time to that of his disseisee, A, although he does not represent the same *persona* or estate. No privity of estate or derivation of titles is necessary between the successive adverse occupants. The only essential is that the original owner shall have been kept out of possession the limited time. At the end of that time, the person in possession can plead the Statute of Limitations as defence in an action of ejectment.

This view is supported by the following decisions: *Fanning* v. *Willcox*,[2] *Shannon* v. *Kinny*,[3] and *Hord* v. *Walton*.[4] It is also supported by the *dicta* of Patteson, J., in *Doe d. Carter* v. *Barnard*,[5] and of Sir John Romilly, M.R., in *Dixon* v. *Gayfere*.[6] *Smith* v. *Chapin*[7] holds that the possession of the successive trespassers must be "connected and continuous," although no privity of estate need be shown between them.

A distinction must, however, be noted between the older form of the Statute of Limitations, as generally followed in this country, and the more recent statutes of 3 and 4 Wm. IV. c. 27, which has been followed in some of the more modern American statutes. This statute provides [S. 34] that when an owner's right of entry and right of action have been lost by the operation of the statute, his title also shall be extinguished. This has been assumed by the Courts to mean that the title of the owner out of possession shall be transferred to the person in possession. Under such construction of the statute, by which it absolutely passes the title to the land, the same line of reasoning would apply as to the acquiring title to an easement by prescription. A disseisor should not be allowed to tack his time to that of his disseisee in order to gain such title to the land.

In the cases of *Dixon* v. *Gayfere* and *Doe d. Carter* v. *Barnard*, cited above, the Courts in applying this statute have made a distinction as to whether this last disseisor is in or out of possession, whether defendant or plaintiff. In these cases it was held that, although the last disseisor, if still in possession, could have tacked his time to that of his disseisee in order to successfully defend against an action of ejectment brought by the original owner, yet having lost the possession, he could not so tack the times in order to regain the land when it had come into the possession of the Court for settlement of title, or into the hands of a mortgagee of the original owner.

An examination of the cases cited in the reference given above from

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[1] 3 Washburn, Real Prop. (5th ed.), 157, 176.
[2] 3 Day, 258.
[3] 1 A. K. Marsh. 3.
[4] 2 A. K. Marsh. 620.
[5] 13 Q. B. 945, at 952.
[6] 17 Beav. 421, at 430.
[7] 31 Conn. 530.

Washburn on Real Property, in support of the view that the Statute of Limitations passes the title, and that successive disseisors cannot tack their times, will show that in many, if not most, of the cases the distinction between the older and more recent forms of the statute is overlooked, as well as the distinction between a disseisin, which will give a good defence as a bar to an action, and one which will pass a title upon which an action can be maintained.

SALE WITHOUT A CONTRACT. — (*From Prof. Keener's Lectures.*) — The case of *Mactier* v. *Frith*, 6 Wend. 103, Langdell's Cases on Contracts, 77, raises the question whether there can be a sale without a contract. If there can be, then the decision in that case is not in conflict with the decision in *McCulloch* v. *Eagle Ins. Co.*, 1 Pick. 278, Langdell's Cases on Contracts, 72.

It is usual to speak of a sale as an executed contract, but it is submitted that it is not necessarily so. The term *contract* implies an obligation to do or refrain from doing something, because of a promise or covenant made by the party alleged to have contracted.

Suppose that A's horse is in B's possession, and A writes to B: "Deliver to the Adams Express Company a package containing $500, properly addressed to me, and the horse is yours." At the moment B deposits the package, the horse becomes B's, the money A's.

Now, what obligation has either of the parties contracted or performed?

B, the offeree, was asked, not to make a promise, but do an act; and as he has simply complied with the terms of the offer, it can hardly be claimed that he has either contracted or performed an obligation. He has simply availed himself of the privilege conferred upon him by an offer.

What obligation has A contracted? If it be said, an obligation to sell the answer is that he was under no obligation until B did what the offer required to be done, and that the doing of the act by B could not precede the passing of the title, so as to create such obligation, as by the terms of the offer the title was to vest simultaneously with the deposit of the money. To say that A has contracted to sell is to say that you can have a contract in which there is not an interval of time between its creation and performance; which is performed without any act on your part, and which can never be broken.

It has been suggested that A contracts not to interfere with B's possession. To say this is to attribute to the parties that of which neither of them thought, viz., the possibility or probability of A's attempting to interfere with B in the enjoyment of his property and the necessity of guarding against it by a contract. A count in assumpsit framed on such a theory would indeed be a novelty.

If A should interfere with B's property he would commit a tort, and could be sued as a tortfeasor.

The transfer of title to personal property would seem to rest, not on contract, but on mutual consent. A can pass title to the horse to B without contracting, if he chooses to give him to B, and B can pass the title to A to $500 in the same way. Now, the difference between a gift and a sale of personal property is, that in the latter the title is transferred in exchange for money. And as B can give money to A, and A can give the horse to B, it would seem that the two can be exchanged without a contract.